

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

VINCENT ZAHORIK	§	
	§	
V.	§	CIVIL ACTION NO. G-13-248
	§	
TRACY TROTT, ET AL.	§	

ORDER

Before the Court is the “Amended Motion to Extend Time on Notice of Appeal or in the Alternative, Indicate a Ruling on Motion for Relief that is Barred by a Pending Appeal” of Plaintiff/Appellant, Vincent Zahorik; the Motion is opposed by the Tennessee Defendants.

Zahorik’s Notice of Appeal was due by July 9, 2014, thirty days after this Court denied his Motion for Reconsideration of its Final Judgment. Zahorik admits that he received the Court’s Order denying reconsideration on June 13, 2014. Zahorik’s Notice of Appeal was filed on July 11, 2014, two days too late. Because a timely Notice of Appeal is mandatory and jurisdictional, Bowles v. Russell, 551 U.S. 205, 209-10 (2007), it appears the Court of Appeals lacks jurisdiction to consider Zahorik’s appeal.

Zahorik’s Motion for an Extension was likewise untimely. Under Rule 4(a)(5) of the Federal Rules of Appellate Procedure, Zahorik had only thirty days from the time to appeal to file such a Motion: August 8, 2014. As a consequence, Zahorik’s Motion was filed on September 2, 2014, was too late and must be denied.

In the alternative, Zahorik requests that the Court issue an indicative order informing the Court of Appeals that it would grant him an extension of the time to appeal if it were permitted to do so by the Court of Appeals. Zahorik's request will be declined. But, in the opinion of this Court, it is doubtful the Court even could re-create jurisdiction in Zahorik's case under these circumstances.

It is, therefore, the **ORDER** of this Court that the "Amended Motion to Extend Time on Notice of Appeal or in the Alternative, Indicate a Ruling on Motion for Relief that is Barred by a Pending Appeal" (Instrument no. 105) of Plaintiff/Appellant, Vincent Zahorik, is **DENIED**.

It is further **ORDERED** that the "Motion to Extend Time on Notice of Appeal or in the Alternative, Indicate a Ruling on Motion for Relief that is Barred by a Pending Appeal" (Instrument no. 104) of Plaintiff/Appellant, Vincent Zahorik, is **DENIED** as moot.

DONE at Galveston, Texas, this ____ 9th ____ day of September, 2014.



John R. Froeschner
United States Magistrate Judge